

**REMARKS**

This response is being submitted in response to an Office communication dated March 10, 2005. In the Office communication, the Examiner asserts that the Appeal Brief filed on December 22, 2004 is nonresponsive to the official action mailed on September 21, 2004, and will not be entered because no claims in the case (Application No. 10/678,514) have been twice rejected as set forth in 35 U.S.C. 134.

Applicants note that a Notice of Appeal was intended to be filed with the Appeal Brief submitted on December 22, 2004. Although the Notice of Appeal was inadvertently omitted, Applicants note that the Transaction History of the present application indicates that a Notice of Appeal was entered by the Patent Office with the filing of the Appeal Brief on December 22, 2004.

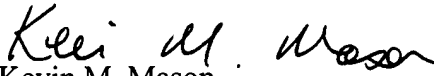
Applicants note that the present application is a continuation of Application No. 10/231,358, which is a continuation of Application No. 09/712,989. The claims of the parent applications were rejected in an Office Action dated October 15, 2001, a final Office Action dated May 21, 2002, an Office Action dated December 4, 2002, and a final Office Action dated June 3, 2003. An Amendment and Response to the final Office Action dated June 3, 2003 was submitted on August 25, 2003, but the amendments were not entered. The present continuation application was filed to have those amendments entered. The present continuation application should therefore be treated as an RCE and, as a result, the claims of the present application have now been rejected five times (including the most recent Office Action dated September 21, 2004). Thus, the Appeal Brief filed December 20, 2004, was properly filed in accordance with 35 U.S.C. 134. Section 134 establishes that an Appeal is proper once the claims have been at least twice rejected.

In the event that the Patent Office maintains their position that an Appeal is improper, Applicants hereby alternatively request that the "Arguments" section of the Appeal Brief submitted on December 20, 2004, be considered a Response to Office Action.

If any outstanding issues remain, or if the Examiner has any further suggestions for expediting allowance of this application, the Examiner is invited to contact the undersigned at the telephone number indicated below.

The Examiner's attention to this matter is appreciated.

Respectfully submitted,



Kevin M. Mason

Attorney for Applicants

Reg. No. 36,597

Ryan, Mason & Lewis, LLP

1300 Post Road, Suite 205

Fairfield, CT 06428

(203) 255-6560

Date: March 21, 2005

Printer Friendly  
10/678,514

Apparatus, system, and method for determining a user position and progress

along a path

# Transaction History



| Date       | Contents Description                         |
|------------|----------------------------------------------|
| 03-10-2005 | Mail Non-Final Rejection                     |
| 03-07-2005 | Non-Final Rejection                          |
| 12-30-2004 | Date Forwarded to Examiner                   |
| 12-22-2004 | Appeal Brief Filed                           |
| 12-22-2004 | Notice of Appeal Filed                       |
| 09-21-2004 | Mail Non-Final Rejection                     |
| 09-20-2004 | Non-Final Rejection                          |
| 04-08-2004 | Case Docketed to Examiner in GAU             |
| 03-18-2004 | Case Docketed to Examiner in GAU             |
| 10-03-2003 | Reference capture on IDS                     |
| 10-03-2003 | Information Disclosure Statement (IDS) Filed |
| 12-30-2003 | Application Return from OIPE                 |
| 12-30-2003 | Application Return TO OIPE                   |
| 12-30-2003 | Application Is Now Complete                  |
| 12-29-2003 | Application Dispatched from OIPE             |
| 12-30-2003 | Application Is Now Complete                  |
| 12-18-2003 | Cleared by OIPE CSR                          |
| 10-31-2003 | IFW Scan & PACR Auto Security Review         |
| 10-03-2003 | Initial Exam Team nn                         |

[Close Window](#)